Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-682

SANTA CLARA PUEBLO, et al, *Petitioners*,

v.

JULIA MARTINEZ, et al, *Respondents*.

On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

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PETITION FOR CERTIORARI FILED NOVEMBER 15, 1976

CERTIORARI GRANTED MAY 16, 1977

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Relevant Docket Entries

Petitioner and Respondent agree that there are no relevant docket entries that require inclusion in this Appendix.

The Judgment, Order or Decision in Question

The Supplemental Memorandum Opinion on Jurisdiction filed by the District Court is found at pages 1(a)-11(a) of the Appendix to the Petition for Writ of Certiorari filed herein. The Memorandum Opinion on the merits by the District Court is found at pages 12(a)-26(a) of the Appendix to the Petition. The Judgment of the District Court is found at pages 27(a) of the Appendix to the Petition. The Opinion of the Tenth Circuit Court of Appeals, Martinez v. Santa Clara Pueblo, 540 F.2d 1039 (10th Cir. 1976) is found at pages 28(a)-45(a) of the Appendix to the Petition.

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

CONSTITUTION AND BYLAWS OF THE PUEBLO OF SANTA CLARA
NEW MEXICO

APPROVED DECEMBER 20, 1935

[seal]

CONSTITUTION AND BYLAWS OF THE PUEBLO OF SANTA CLARA, NEW MEXICO

PREAMBLE

We, the people of Santa Clara Pueblo, in order to establish justice, promote the common welfare and preserve the advantages of self-government, do ordain and establish this constitution.

ARTICLE I—JURISDICTION

This constitution shall apply within the exterior boundaries of Santa Clara pueblo grant and to such other lands as are now or may in the future be under the jurisdiction of the pueblo of Santa Clara. This constitution shall apply to and be for the benefit of all persons who are members of the pueblo of Santa Clara.

ARTICLE II—MEMBERSHIP

SECTION 1. *Conditions of membership.*—The membership of the Santa Clara pueblo shall consist as follows:

(a) All persons of Indian blood whose names appear on the census roll of the Santa Clara pueblo as of November 1, 1935, provided that within one year from the adoption and approval of this constitution corrections may be made in the said roll by the pueblo council with the approval of the Secretary of the Interior.

(b) All persons born of parents both of whom are members of the Santa Clara pueblo.

(c) All children of mixed marriages between members of the Santa Clara pueblo and nonmembers, provided such children have been recognized and adopted by the council.

(d) All persons naturalized as members of the pueblo.

SEC. 2. *Naturalization.*—Indians from other pueblos or reservations who marry a member of Santa Clara pueblo may become members of the pueblo, with the assent of the council, by naturalization. To do this they must (1) go before the pueblo council and renounce allegiance to their tribe and declare intention of becoming members of the Santa Clara pueblo. They shall swear that from that date on they will not receive any benefits from their people, except through inheritance. (2) A year later they shall go before the pueblo council again, swear allegiance to the pueblo of Santa Clara and receive membership papers; provided, they have kept their promise from the time of their first appearance before the pueblo council.

ARTICLE III—ORGANIZATION OF THE PUEBLO COUNCIL

SECTION 1. *Officers.*—The governing power of the pueblo of Santa Clara shall be vested in the pueblo council which shall consist of the following officers:

Officers:	*Number*
Governor	1
Lieutenant Governor	1
Representatives	8
Secretary	1
Treasurer	1
Interpreter	1
Sheriff	1

and such other officers as the council may recognize or appoint.

SEC. 2.—*Election of Governor, Lieutenant Governor, secretary, treasurer, interpreter, and sheriff.*—On the first Saturday of each year an election shall be held within the pueblo of Santa Clara, at which a Governor, Lieutenant Governor, secretary, treasurer, interpreter, and sheriff shall be elected by secret ballot to serve for the ensuing year.

SEC. 3. *Who may vote.*—Every member of the pueblo of Santa Clara who is of sane mind and over 18 years of age, may vote at any election. Any member who is absent from the pueblo on the date of any election shall have the right to vote by mail under such rules as may be prescribed by the pueblo council.

SEC. 4. *Candidates.*—Candidates for Governor, Lieutenant Governor, secretary, treasurer, interpreter, and sheriff shall be nominated at least fifteen (15) days before the date upon which each election is to be held. Nominations for the first election shall be made by the recognized parties now existing within the pueblo. Thereafter, nominations shall be made in a manner prescribed by the council of the pueblo.

SEC. 5. *Representatives.*—Two representatives shall be appointed to the pueblo council upon the date of the first election, for a term of 1 year by each of the four recognized nized parties now existing within the pueblo, and in all future elections eight representatives shall be chosen in a manner to be prescribed by the council.

SEC. 6. *Manner of elections.*—All nominations for office and elections shall be made and held in a manner prescribed by the council of the pueblo.

ARTICLE IV—THE PUEBLO COUNCIL AND ITS POWER

SECTION 1. *Legislative power.*—The legislative power shall be vested in the pueblo council, and the said power shall be exercised in accordance with, and not in conflict

with, the constitution or any laws of the United States of America.

The pueblo council shall have the following rights and powers:

1. To employ legal counsel, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior.

2. To prevent the sale, disposition, lease, or encumbrance of pueblo lands, interests in lands, or other tribal assets.

3. To negotiate with the Federal, State, and local governments, and with the councils and governing authorities of other pueblos or Indian tribes.

4. To advise the Secretary of the Interior with regard to all appropriation estimates or Federal projects for the benefit of the pueblo prior to the submission of such estimates to the Bureau of the Budget and to Congress.

5. To enact ordinances, not inconsistent with the constitution and bylaws of the pueblo, for the maintenance of law and order within the pueblo and for the punishment of members, and the exclusion of nonmembers violating any such ordinances, for the raising of revenue and the appropriation of available funds for pueblo purposes, for the regulation of trade, inheritance, land-holding, and private dealings in land within the pueblo, for the guidance of the officers of the pueblo in all their duties, and generally for the protection of the welfare of the pueblo and for the execution of all other powers vested in the pueblo by existing law: *Provided*, That any ordinance which affects persons who are not members of the pueblo shall not take effect until it has been approved by the Secretary of the Interior or some officer designated by him.

6. To delegate any of the foregoing powers to appropriate officers of the pueblo, reserving the right to review any action taken by virtue of such delegated power.

SEC. 2. *Judicial power.*—The pueblo council shall also adjudicate all matters coming before it over which it has jurisdiction. In all controversies coming before the pueblo council, the council shall have the right to examine all witnesses and ascertain full details of the controversy, and after the matter shall have been sufficiently commented upon by the interested parties, the council shall retire to a private place to make a decision. All of the members of the council except the Governor and the Lieutenant Governor shall have the right to vote upon a decision, and a majority shall rule. In the event of a tie, the Governor shall have the right to cast a vote, thereby breaking the tie. It shall be the duty of the Governor and the Lieutenant Governor to express to the other members of the pueblo council their views regarding the case before a vote is taken.

SEC. 3. *Common law of pueblo.*—With respect to all matters not covered by the written constitution, bylaws, and ordinances of the pueblo of Santa Clara, nor by those laws of the United States of America which are applicable to the pueblo of Santa Clara, the customs and usages of the pueblo, civil, and criminal, as interpreted by the council, shall have the force of law.

ARTICLE V—THE GOVERNOR, HIS POWERS AND DUTIES

The Governor shall be the executive head of the pueblo government. It shall be his duty to enforce the laws of the pueblo, civil and criminal, written and unwritten. If any person considers that any ruling of the Governor is unjust, he shall have the right to demand through any representative of the pueblo council or directly to the pueblo council that the matter be brought before the pueblo council for adjudication at the next meeting of said officers.

In all community work the Governor shall be the sole overseer unless he is unavoidably absent, in which event the Lieutenant Governor shall have the same rights and duties as the Governor.

Article VI—Vacancies and Impeachments

Sec. 1. *Vacancies.*—Should any vacancy occur in any of the offices or any member of the council, the council shall, by a majority vote, have the right to name a successor for the said office, except that in the event the office of Governor becomes vacant for any reason, then and in that event the Lieutenant Governor shall thereupon become the Governor with all duties and powers of the said office, and further, that the successor to any pueblo representative appointed by a particular group shall be chosen by the same group.

Sec. 2. *Impeachment.*—Any officer charged with grave offenses may be tried before the other members of the council. The manner of conducting impeachment shall be prescribed by the council. The council shall act as the trial court, and if they decide, by a two-thirds vote, to remove the accused member from the office he will be removed.

Article VII.—Land

Section 1. *Pueblo title.*—Title to all lands of the pueblo, whether assigned to the use of individuals or withheld for the common use of the members of the pueblo, shall forever remain in the pueblo itself and not in the individual members thereof. All the members of the pueblo are declared to have an equal right to make beneficial use, in accordance with ordinances of the council, of any land of the pueblo not heretofore or hereafter assigned to individual members.

For the purpose of this article the word "member" shall be defined by the council.

Sec. 2. *Individual rights of possession.*—The right of full possession shall be guaranteed to every member of the pueblo, holding lands assigned to him by the Pueblo Council, for cultivation or other purposes: *Provided,* That no member holding said lands shall sell or will same to an alien. All lands assigned to individuals of the pueblo must

be completely fenced within three years. Any violation of the above provision shall be sufficient cause for the council to dispossess him of said land. He shall have the right, however, to rent to a pueblo member or, with the approval of the council, to an alien, all lands under his possession, for a term not to exceed two years. He shall have the right to sell his interest in said lands to any other member of the pueblo after his assignment has been finally approved, subject to such regulations as the council may prescribe.

Sec. 3. *Council to have power of granting assignments.*—When any member of the pueblo desires a piece of unimproved pueblo land, he shall select his land, and then make his application for same to the council of the pueblo. If the council decides to grant him the land or any part thereof, they shall mark out the boundaries of same. The grantee shall thereafter have full possession of said land, unless the council shall, in accordance with the constitution, bylaws, and ordinances of the pueblo, dispossess him of the same.

Sec. 4. *Prior assignments recognized.*—All assignments of land heretofore made by the pueblo authorities are hereby recognized and confirmed.

Article VIII.—Amendments

No amendments or changes shall be made in the constitution or bylaws of the pueblo except by a decision of the general pueblo. At the request of the council the Secretary of the Interior shall submit any proposed amendment to the said constitution or bylaws to a vote of the people. If such amendment is approved by a majority of the qualified voters of the pueblo, 21 years old or over, voting at an election in which at least 30 percent of those entitled to vote shall vote, it shall be submitted to the Secretary of the Interior, and if he shall approve the same it shall become effective.

BYLAWS OF THE PUEBLO OF SANTA CLARA, NEW MEXICO

ARTICLE I.—DUTIES OF OFFICERS

SECTION 1. *Governor.*—The Governor shall be in full charge of all meetings of the pueblo council. It shall be his duty to see that perfect order is preserved in every respect. In the discussion of all business but one person shall be allowed to speak at a time, and the Governor shall have the right to set a time limit upon speakers. When any member of the pueblo council or any other person desires to speak at a meeting of the pueblo council, such person shall first ask permission of the Governor to do so before proceeding. It shall be the duty of the Governor to see that all business presented to the council within any month be disposed of, if possible, before the beginning of the next month.

SEC. 2. *Lieutenant Governor.*—The Lieutenant Governor shall be next in rank to the Governor. In case of the death, resignation, absence, impeachment, or other disability of the Governor, the Lieutenant Governor shall become Governor or act as Governor during such disability or absence. As long as the Governor is at the pueblo holding office, the Lieutenant Governor shall have the power only of a representative in the council, except as otherwise provided in the constitution and bylaws of the pueblo.

SEC. 3. *Representatives.*—Representatives shall represent their people in the pueblo council. They shall bring before the council at every meeting the matters that their people want brought before the council and such other matters as each representative believes should be presented to the council. Such matters may originate with any member of the pueblo or may originate with the representative himself.

SEC. 4. *Secretary.*—The secretary shall keep a record of all council proceedings and all business authorized or transacted by the council. At the beginning of each regular meeting, he shall call the roll of councilmen and all specially summoned persons expected to be present. He shall then read the minutes of the previous meeting and the officers shall then decide as to whether they should be approved as they stand, and all persons present shall have the right to suggest corrections. After the minutes of the previous meeting have been accepted, the secretary will then mark them approved. The secretary shall attend to all official correspondence as directed by the pueblo council and the Governor.

SEC. 5. *Treasurer.*—It shall be the duty of the treasurer to receive all money due to the pueblo and to give a receipt for the same. He shall deposit the pueblo money in a bank which should be approved by the pueblo council. He shall keep a record in his books of all moneys received and paid out. Moneys of the pueblo shall be paid by check signed by the treasurer and countersigned by the Governor. No moneys shall be paid out unless the same shall have been authorized to be expended by the council and vouchers for same shall have been signed by the Governor and the secretary. At each regular meeting of the pueblo council, the treasurer shall present to them a statement of receipts and disbursements made by him since the last regular meeting and he shall submit to the pueblo council at each regular meeting all of his books and a statement of the financial condition of the pueblo funds.

SEC. 6. *Interpreter.*—The interpreter shall translate from the Tewa language into the English language or from English into the Tewa language whenever directed to do so by the pueblo council. He shall also assist the secretary with the official correspondence of the pueblo.

SEC. 7. *Sheriff.*—It shall be the duty of the sheriff to assist the Governor in keeping law and order in the pueblo. He shall maintain order at all meetings, also in the village and on the pueblo lands. He shall report on disorders to

the council. He shall have authority to stop trouble immediately wherever he finds it, without special authorization from the Governor. In case of disputes or difficulties the sheriff shall bring the parties in controversy before the council for a decision. He shall bring before the council for punishment all violators of the laws of the pueblo. He shall serve notices or summons upon all persons required to be present before the council in criminal or civil proceedings.

Article II.—Qualifications of Office

Section 1. *Qualifications of Governor and Lieutenant Governor.*—The Governor and the Lieutenant Governor must be at least twenty-five (25) years of age and shall not be over sixty-five (65) years of age. They must be members of the pueblo of Santa Clara and be residents of said pueblo at the time of their election. They must be able to speak the Tewa language fluently and also be able to speak either the English or Spanish languages well enough to be understood.

Sec. 2. *Qualifications of representatives.*—The representatives must be at least twenty-five (25) years of age. They must be members of the pueblo of Santa Clara and residents thereof at the time of their selection. They must be able to speak the Tewa language fluently.

Sec. 3. *Qualifications of secretary, treasurer, and sheriff.*—The secretary, treasurer, and sheriff must be not less than twenty-five (25) years of age and not over sixty-five (65) years of age. They must be members of the pueblo of Santa Clara and residents thereof at the time of their election. They must be able to speak the Tewa language fluently and speak, read, and write the English language, and it will be preferable to have those who can also understand the Spanish language.

Sec. 4. *Qualifications of the Interpreter.*—The interpreter shall be not less than twenty-five (25) years of age, and

not over sixty-five (65) years of age, and must be a member of the pueblo of Santa Clara and a resident thereof at the time of his election. He must be able to speak the Tewa language fluently and to translate the said language into English and Spanish and the English and Spanish languages into the Tewa language.

Article III.—Conduct of Council Meetings

Section 1. *Regular meetings.*—Regular meetings of the pueblo council shall be held at least once a month, at such time and place as shall be fixed by the council, and special meetings shall be held at such times and places as shall be fixed by the council. No action shall be taken by the council at any meeting unless at least a majority of the members are present.

Sec. 2. *Attendance of council members.*—Every member of the pueblo council shall be required to be present at each regular monthly meeting and at each special meeting of the pueblo council unless it should be impossible for such member to be there, in which event said member shall notify the Governor of his inability to attend, giving reasons therefor. The Governor will then refer the matter to the pueblo council who, if the reasons given are found to be justifiable, shall excuse the absence of the said member. In the event that members of the council receive compensation for their services from the pueblo funds, as unexcused absence shall be punished by a fine to be fixed by the pueblo council.

Sec. 3. *Matters of general interest to pueblo.*—In all matters in which all of the people of the pueblo of Santa Clara are interested, the pueblo council shall cause the sheriff to notify all members of the pueblo of the time and place at which such business is to be transacted. At least three days' notice of such general meeting of the pueblo council shall be given in such manner as shall be prescribed by the bylaws of the pueblo. If any member of the pueblo wants a special meeting for all the people in the pueblo, he

will first get permission from the pueblo council through a representative, or through the Governor.

Sec. 4. *Special meetings on grievances.*—If any member of the pueblo of Santa Clara has any grievance against any other member of the said pueblo which cannot await settlement at the regular pueblo council meeting, he shall report the same to the Governor who, if he deems that the case requires speedy attention, shall call a special meeting of the council at such time and place as the Governor shall fix, to pass upon the said matter.

Sec. 5. *Advice of counsel.*—If any cause cannot be fully understood by the pueblo council, the pueblo council may consult the special attorney for the Pueblo Indians and ask for his advice.

Artice IV—Personal Liberties

Section 1. *Private rights of each member of the pueblo.*—Each member of the pueblo of Santa Clara shall be assured his private rights as a citizen of the United States, and no attempt shall be made by the officers of the pueblo to enforce any order upon him depriving him of said rights.

Sec. 2. *Preference to relatives.*—Preference to relatives shall not be given by council members under any circumstances. If they clearly show preference they will be exposing themselves to impeachment.

Sec. 3. *Old members of the pueblo.*—All members of the pueblo who have completed their 75th year shall not be compelled to work on community work (pueblo cleaning, fencing, etc.), and ditch work. If, however, they of their own accord attend to community work they will free to work as they please.

Retired members will not, however, be able to fill the places of sons who are of working age and not justified in refusing to serve on community work and ditch work.

Article V—Intoxication

Any person showing signs of intoxication will not be allowed to take part in a council meeting. Council members who attend meetings while intoxicated or who have missed a meeting because of intoxication will face a charge of impeachment.

All liquor charges will be decided by the pueblo council and fines will be made by the council when cases come up before the council.

Article VI—Stock

From March 1 to November 1 of each year it shall be the duty of all members of the pueblo to report all loose animals found in cultivated fields of the pueblo to the Governor. The Governor will then notify the owners. If they do not remove the animals from the fields at once, they will be subject to a fine. The fine will be made according to the amount of damage done. If the Governor cannot by himself settle a question like this he will be free to bring the case before the pueblo council.

Article VII—Ratification

This constitution and bylaws, when ratified by a majority vote of the members of the pueblo over twenty-one years of age at a special election, called by the Secretary of the Interior, in which at least thirty percent (30%) of the eligible voters shall vote, shall be submitted to the Secretary of the Interior for his approval and shall be effective from the date of such approval. The constitution and bylaws of the pueblo may thereafter be amended or revoked in the manner provided under article VIII of the constitution.

Certification of Adoption

Pursuant to an order, approved November 23, 1935, by the Secretary of the Interior, the attached constitution and by-laws was submitted for ratification to the Indians of the

Santa Clara pueblo and was on December 14, 1935, duly adopted by a vote of 145 for and 8 against, in an election in which over 30 per cent of those entitled to vote cast their ballots, in accordance with section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the act of June 15, 1935 (Pub., No. 147, 74th Cong.).

PATRICI GUTIERREZ,
Chairman of Election Board.
CLETO TAFOYA,
Secretary of Election Board.

NESTOR NARANJO.
JOHN NARANJO.
ANASTACIO NARANJO.
AGAPITO NARANJO.
JOSE NARANJO.
JOSEPH FILARIO TAFOYA.
S. D. ABERLE,
Superintendent in charge the United Pueblos Agency.

I, Harold L. Ickes, the Secretary of the Interior of the United States of America, by virtue of the authority granted me by the act of June 18, 1934 (48 Stat. 384), as amended, do hereby approve the attached constitution and by-laws of the pueblo of Santa Clara.

All rules and regulations heretofore promulgated by the Interior Department or by the Office of Indian Affairs, so far as they may be incompatible with any of the provisions of the said constitution or by-laws are hereby declared inapplicable to the pueblo of Santa Clara.

All officers and employees of the Interior Department are ordered to abide by the provisions of the said constitution and by-laws.

Approval recommended December 18, 1935.

JOHN COLLIER,
Commissioner of Indian Affairs.

HAROLD L. ICKES,
Secretary of the Interior.
[SEAL]

WASHINGTON, D. C., *December 20, 1935.*

AMENDMENT—CONSTITUTION AND BY-LAWS OF THE PUEBLO OF SANTA CLARA, NEW MEXICO

AMENDMENT I. Section 2 of Article III shall be amended to read:

"Within the first five days of each year an election shall be held within the Pueblo of Santa Clara, at which a Governor, Lieutenant Governor, secretary, treasurer, interpreter, and sheriff shall be elected by secret ballot to serve for the ensuing year."

I, Oscar L. Chapman, the Assistant Secretary of the Interior of the United States of America, by virtue of the authority granted me by the Act of June 18, 1934 (48 Stat. 984), as amended, do hereby approve the attached Amendment I, amending Section 2 of Article III of the Constitution and By-laws of the Pueblo of Santa Clara, New Mexico.

Approval recommended December 27, 1939.

F. H. DAIKER,
Assistant to the Commissioner.

OSCAR L. CHAPMAN,
Assistant Secretary of the Interior.

[SEAL]

WASHINGTON, D. C., *December 29, 1939.*

CERTIFICATION OF ADOPTION

Pursuant to an order, approved November 21, 1939 by the Assistant Secretary of the Interior, the attached Amendment to the Constitution and By-laws of the Pueblo of Santa Clara was submitted for ratification to the qualified voters of the Pueblo, and on December 19, 1939 was adopted by a vote of 124 for, and 12 against in an election in which more than 30 per cent of those entitled to vote cast their ballots in accordance with section 16 of the Indian Reor-

ganization Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378).

JOSEPH F. TAFOYA,
Governor, Pueblo Council of Santa Clara.

ALLAN LAFLIN.
Acting Superintendent, United Pueblos Agency.

250316—40

THE 1939 ORDINANCE

December 15, 1939

Be it ordained by the Council of the Pueblo of Santa Clara, New Mexico, in regular meeting duly assembled, that hereafter the following rules shall govern the admission to membership to the Santa Clara Pueblo.

1. All children born of marriages between members of the Santa Clara Pueblo shall be members of the Santa Clara Pueblo.
2. That children born of marriages between male members of the Santa Clara Pueblo and non-members shall be members of the Santa Clara Pueblo.
3. Children born of marriages between female members of the Santa Clara Pueblo and non-members shall not be members of the Santa Clara Pueblo.
4. Persons shall not be naturalized as members of the Santa Clara Pueblo under any circumstances.